

House Bill 620

By: Representatives Dooley of the 38th, Oliver of the 83rd, Ashe of the 56th, Buckner of the 130th, Benfield of the 85th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Part 2 of Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated, relating to the state highway system, so as to change certain provisions relating to the Roadside Enhancement and Beautification Council and its membership, purpose, and compensation; to change certain provisions relating to the Roadside Enhancement and Beautification Fund and dedication of certain revenues to such fund; to provide for landscaping and maintenance projects on state highway system rights of way; to change certain provisions relating to application for tree trimming permit and annual renewal, forms, application fees, evaluation, and criteria for trimming trees or vegetation; to prohibit trimming or removal of trees or other vegetation on state highway system rights of way in certain circumstances; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated, relating to the state highway system, is amended by revising subsection (b) of Code Section 32-6-75.1, relating to the Roadside Enhancement and Beautification Council and its membership, purpose, and compensation, as follows:

"(b) The council shall aid the commissioner in formulating policies and discussing problems related to the administration of this article. In addition, the council shall:

(1) ~~Review, comment upon, and make recommendations to the commissioner on the standards and policies to be used in the trimming and removal of vegetation on state rights of way in front of legally erected and maintained outdoor advertising signs;~~

(2) Make recommendations to the department regarding standards for ~~vegetation removal~~ and landscape and vegetation maintenance plans ~~submitted by permittees including without limitation the use of viewing zones under Code Section 32-6-75.3;~~

(3) Review the performance of permittees holding current tree and vegetation trimming permits issued under Code Section 32-6-75.3 for compliance with the requirements of such permits including without limitation the implementation of landscaping plans;

(4)(2) Encourage the contribution of funds from appropriate sources to support roadside enhancement and beautification;

(5)(3) Submit to the commissioner annually not later than 30 days after the date of its fourth quarter meeting a written report of findings based upon its reviews of permittees' performances and recommendations including without limitation any recommendations for expenditures for roadside enhancement and beautification; and

(6)(4) Perform such other functions as may be specified for the council by the department.

The council shall have full and complete access to all department records necessary for the performance of its duties."

SECTION 2.

Said part is further amended by revising Code Section 32-6-75.2, relating to the Roadside Enhancement and Beautification Fund and dedication of certain revenues to such fund, as follows:

"32-6-75.2.

(a) All landscaping and vegetation maintenance projects for state highway system rights of way, including but not limited to roadside enhancement and beautification projects, shall be planned and executed to protect biodiversity to the greatest extent practicable, with emphasis on use of native plant species and protection against destruction or degradation of natural habitats.

(b) There is established a special fund to be known as the 'Roadside Enhancement and Beautification Fund.' This fund shall consist of ~~all moneys collected under Code Section 32-6-75.3~~; any appropriations by the General Assembly to the fund, revenues derived from the sale of any special and distinctive wildflower motor vehicle license plates issued pursuant to Code Section 40-2-49.2, any contributions to the fund from any other source, and all interest thereon. ~~All moneys collected under Code Section 32-6-75.3 and~~ manufacturing fees for any special and distinctive wildflower motor vehicle license plates shall be paid into the fund. All balances in the fund shall be deposited in an interest-bearing account identifying the fund and shall be carried forward each year so that no part thereof may be deposited in the general treasury. The department shall administer the fund and expend moneys held in the fund in furtherance of roadside enhancement and beautification projects along public roads in this state ~~and administration of the tree and vegetation trimming permit program under Code Section 32-6-75.3~~. In addition to the

foregoing, the department may, without limitation, promote and solicit voluntary contributions, promote the sale of motor vehicle license tags authorized under Code Section 40-2-49.2, and develop any fund raising or other promotional techniques deemed appropriate by the department. Contributions to the fund shall be deemed supplemental to and shall in no way supplant funding that would otherwise be appropriated for these purposes. The department shall prepare, by February 1 of each year, an accounting of the funds received and expended from the fund. The report shall be made available to the members of the State Transportation Board, the Senate Transportation Committee, the Transportation Committee of the House of Representatives, and to members of the public on request."

SECTION 3.

Said part is further amended by revising Code Section 32-6-75.3, relating to application for tree trimming permit and annual renewal, forms, application fees, evaluation, and criteria for trimming trees or vegetation, as follows:

"32-6-75.3.

~~(a)(1) For purposes of this Code section, the term:~~

~~(A) 'Removal' or 'removed' means the elimination of trees or other vegetation from a viewing zone.~~

~~(B) 'Trimming' or 'trimmed' means the pruning of excess limbs or branches from trees or other vegetation which are not removed from a viewing zone.~~

~~(C) 'Viewing zone' means a continuous 500-foot horizontal distance parallel to a state right of way and adjacent to or otherwise within the line of sight of an outdoor advertising sign.~~

~~(2) The General Assembly finds and declares that outdoor advertising provides a substantial service and benefit to Georgia and Georgia's citizens as well as the traveling public. Therefore, the General Assembly declares it to be in the public interest that provisions be made for the visibility of outdoor advertising signs legally erected and maintained along the highways in this state to provide information regarding places offering lodging, food, motor vehicle fuels and lubricants, motor service and repairs, or any other services or products available to the general public. Recognizing, however, that the beautification of this state and the health of its environment are absolutely essential and equally as important to the traveling public, the General Assembly finds and declares that these needs must be balanced.~~

~~(b)(1) So as to promote these objectives and in accordance with the provisions of this Code section, the commissioner shall provide by rule or regulation for the issuance and annual renewal of permits for the trimming and removal of trees and other vegetation on~~

the state rights of way within viewing zones with respect to outdoor advertising signs legally erected and legally maintained adjacent to said rights of way. Such rules and regulations shall include, without limitation, standards for survival of vegetation trimmed or planted.

(2) So as to ensure that no vegetation maintenance permits are issued for the purpose of creating new outdoor advertising signs, no owner of outdoor advertising signs erected after January 1, 1999, or such owner's agent, will be eligible to make application for vegetation maintenance for a period of five years from the date a new sign is permitted.

(c) Application for a tree or vegetation trimming or removal permit and the annual renewal thereof shall be made upon the forms prescribed and provided by the department and shall contain the signature of the applicant and such other information as may be required by the department's rules and regulations.

(d) An application fee shall accompany the application for each vegetation maintenance permit and both the application and fee shall be submitted to the department. There shall be an annual renewal of the permit for activities in the original scope of the permit. The department shall promulgate rules and regulations setting forth the application fees and renewal fees. Such application and renewal fees shall be established by the department in reasonable amounts in order to fully recover the costs of administering the vegetation maintenance program.

(e)(1) The department shall evaluate each application for a permit under this Code section and require as a condition of granting any permit under this Code section that the value of the landscaping to be either provided or paid for by the applicant is not less than the department's appraised value of the benefit to be conferred by the state upon the applicant by allowing the trimming or removing of trees or other vegetation as requested; which shall be the value of the trees or vegetation to be trimmed or removed; provided; however, that a permit may be granted to an otherwise qualified applicant in a case where the value of the landscaping to be either provided or paid for by the applicant is less than the department's appraised value of the trees or other vegetation to be trimmed or removed if, in addition, the applicant pays to the department an amount equal to the amount of the difference between the value of the landscaping to be either provided or paid for by the applicant and the department's appraised value of the trees or other vegetation to be trimmed or removed.

(2)(A)(i) No trees or vegetation shall be trimmed or removed under this Code section other than within a viewing zone.

(ii) No removal of any hardwood tree having a diameter outside bark of more than 8 inches at a height of 6 inches above ground level or any historic or endangered

~~species tree or any tree planted as part of any local, state, or federal government project shall be permitted under this Code section.~~

~~(iii) All hardwood trees having a diameter outside bark of 8 inches or less at a height of 6 inches above ground level may be removed from within a viewing zone.~~

~~(iv) All nonhardwood trees may be removed from within a viewing zone for a combined total of 250 feet horizontal distance parallel to the right of way.~~

~~(v) All nonhardwood trees having a diameter outside bark of less than 12 inches at a height of 6 inches above ground level may be removed from within a viewing zone.~~

~~(vi) Pine trees having a diameter outside bark of 12 inches or more at a height of 6 inches above ground level shall not be removed from a viewing zone in such numbers as to reduce stocking to less than the minimum standard for full stocking for such trees, as determined by the Georgia Forestry Commission, over an area having a combined total of not less than 250 feet horizontal distance parallel to the right of way.~~

~~(vii) The provisions of divisions (iv) and (vi) of this subparagraph notwithstanding, in the case of any outdoor advertising sign erected on or before April 20, 1998, and which is less than 35 feet in height as measured from the top of the sign to the ground directly beneath or to the road level, whichever distance results in the best view or the greatest elevation, or which is subsequently lowered to such a height, the horizontal distance of the area within the viewing zone from which all trees, other than hardwoods having a diameter outside the bark of more than 8 inches at a height of 6 inches above ground level, may be removed shall be increased to 350 feet.~~

~~(B) Pruning or trimming of trees under a permit shall conform to industry standards as defined by the National Arborist Association, International Society of Arboriculture or ANSI A300 pruning standards as of January 1, 1999, or such later edition as may be adopted by rule or regulation of the department.~~

~~(3) An applicant's record of conduct regarding disturbance of trees or other vegetation on state rights of way shall be considered by the department as part of the evaluation process for any permit or permit renewal application.~~

~~(4) Prior to approving any permit application to remove allegedly diseased trees, the department shall verify that such trees are in fact diseased. Such determination shall be made by the department's landscape architect.~~

~~(5) A performance bond in an amount adequate for the requirements of the permit as determined by the department shall be required of each permittee.~~

~~(f)(1) No trees or other vegetation on state rights of way shall be trimmed, killed, or removed by any person other than in accordance with a permit issued under this Code~~

section by any person other than the department or an authorized agent or contractor thereof.

(2) No outdoor advertising sign to which a permit under this Code section is applicable shall be unused for advertising for a period of six consecutive months or more.

(3) On and after July 1, 1999, no outdoor advertising sign to which a permit under this Code section is applicable shall be maintained in such a condition of disrepair as to be unusable for advertising.

(4)(A) In cases where the department has reasonable cause to believe that a violation of this subsection has been committed by any person, the procedures provided under Code Section 32-6-95 shall apply the same as in cases wherein the department believes that a sign is being maintained in violation of this part.

(B) Following notice, hearing, and a finding that a person has committed a violation of paragraph (1) of this subsection, a civil fine of not less than \$10,000.00 nor more than \$20,000.00, and restitution in an amount equal to the appraised value of the trees or vegetation, or both, which were unlawfully trimmed or removed, shall be imposed on such person.

(C) Following notice, hearing, and a finding that a permittee under this Code section has committed a violation of paragraph (2) of this subsection, an order directing the removal of such unused sign, at the expense of the permittee, shall be issued.

(D) Following notice, hearing, and a finding that a permittee under this Code section has committed a violation of paragraph (3) of this subsection, an order directing the removal of such unusable sign shall be issued.

(E) The department or its authorized agents shall be authorized to enter upon private lands and disassemble and remove signs without civil or criminal liability therefor pursuant to an order issued in accordance with this paragraph and as provided by Code Section 32-6-96 for disassembly and removal of illegal outdoor advertising signs. It shall be unlawful for any person to trim or remove any trees or other vegetation growing on state highway system rights of way except for highway construction or maintenance, to protect the public safety, to prevent interference with public utilities, or as part of a roadside enhancement and beautification project. No trees or other vegetation growing on state highway system rights of way shall be trimmed or removed for purposes of maintaining or increasing visibility of outdoor advertising signs adjacent to such rights of way. Violation of this Code section shall be a misdemeanor."

SECTION 4.

This Act shall become effective on the first day of the month following the month in which it is approved by the Governor or in which it becomes law without such approval.

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SECTION 5.

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All laws and parts of laws in conflict with this Act are repealed.